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COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 412th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 May 2000, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic report of Poland

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.412/Add.1.

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GE.00-41773 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Third periodic report of Poland (CAT/C/44/Add.5; HRI/CORE/1/Add.25/Rev.1)

1. At the invitation of the Chairman, Mr. Knothe, Ms. Janiszewska, Mr. Przemyski, Mr. Sledzik, Ms. Zurek and Ms. Wyznikiewicz (Poland) took places at the Committee table.

2. The CHAIRMAN invited the Polish delegation to introduce the third periodic report of Poland (CAT/C/44/Add.5).

3. Mr. KNOTHE (Poland) said that the period covered by the third periodic report had been marked by major reforms in the social and legal spheres alike. On 2 April 1996 the Polish Parliament had adopted the new Constitution, and on 1 September 1998 a new codification of the criminal law had come into force. The new Fundamental Law established effective protection for the rights and freedoms of citizens and the international instruments to which Poland had adhered constituted an integral part of the internal legal order. Thus the Convention and all the other international human rights instruments that had been ratified could be directly invoked in Poland.

4. The individual rights guaranteed by the Constitution included the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment. Anyone deprived of liberty otherwise than by the decision of a court of law could lodge a complaint with the courts. The new Penal Code established criminal responsibility for infringement of the rules of humanitarian law and offences against human dignity. The death penalty had been abolished and life imprisonment had thus become the heaviest punishment that could be inflicted. The Polish authorities were currently taking steps to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty. The new Penal Code established criminal responsibility for any act of cruelty inflicted on persons deprived of their liberty and for State officials who resorted to violence or threats thereof or committed acts of physical or mental cruelty to obtain confessions or information. Through those new provisions Poland had put into effect the recommendations made by the Committee against Torture following its consideration of the previous periodic report (CAT/C/25/Add.9).

5. Attention should be paid to the inclusion in the new Code of Criminal Procedure of a provision that prohibited influencing the statements of a person being interrogated by using coercive measures or unlawful threats or by resorting to hypnosis or any other means of acting upon the mental processes of the persons under interrogation. Further, testimony and statements submitted in circumstances precluding freedom of expression or obtained by the prohibited means aforementioned were inadmissible as evidence. The new Code of Criminal Procedure considerably strengthened the guarantees afforded to the accused. It provided that any detainee

could have immediate access to and directly communicate with a lawyer. It specified the maximum duration of detention and repeated the provision giving the courts exclusive competence to order provisional custody.

6. It should also be noted that information on human rights was being widely disseminated and that the subject was being included in the curricula of an increasing number of educational institutions. Chairs of human rights had been established at several Polish universities. Seminars and training courses were regularly held for judges, prosecutors and State officials. Finally, it was noteworthy that, following Poland's accession to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Committee for the Prevention of Torture had conducted, in July 1996, its first inspection of places of detention in Poland. During that inspection no immediate intervention had been undertaken.

7. Mr. EL MASRY (Country Rapporteur) thanked the Polish delegation for introducing its report (CAT/C/44/Add.5), whose slightly late submission was largely explained by the fact that during the period under review the country had been undergoing intensive social and legal transformations, including the promulgation of a new Constitution and the adoption of a new Penal Code in 1997. The report was very illuminating and informative and had been prepared with due regard to the Committee's guidelines as to form and content.

8. With regard to the implementation by Poland of article 1 of the Convention, it would be recalled that during the consideration of its second periodic report (CAT/C/25/Add.9) the Polish delegation had stated that the new Constitution would formally establish the principle according to which international conventions ratified by Poland ranked equally with the Constitution, so that the definition of torture contained in the Convention would become an integral part of the Polish legal system without the need for legislation to that effect. The Committee had not been convinced by that argument and had repeated its previous recommendation that a definition of torture reflecting all the elements of the definition set out in the Convention should be incorporated into Polish domestic law. However, paragraph 23 of the report under consideration stated that the Convention could be applied directly and that there was no need to incorporate it into domestic law. It was even affirmed that, while not all international instruments were self-executing, most of the provisions of the Convention against Torture were so, including in particular article 1 thereof. The matter had been debated at length during the consideration of the second periodic report and the Committee had concluded that a definition of torture was imperative. The Alternate Rapporteur would elaborate on that point.

9. In connection with article 2 of the Convention, some clarification would be welcomed regarding the "crimes against peace" referred to in paragraph 30 of the report. Concerning the application of article 2, paragraph 2 of the Convention, paragraph 31 of the report under consideration did not make it clear whether any action had been taken in the legislative or administrative spheres or in those of public information or education to give full effect to the provisions of that paragraph.

10. The question of the criminal responsibility of an officer who had carried out the orders of a superior had already been raised during the consideration of the second periodic report, and the Committee had expressed concern at the fact that obedience to a legitimate hierarchical authority

was apparently considered to be a factor that might be invoked in justification of the perpetration of an act of torture. The only development in that regard seemed to be that article 344 of the new Penal Code exempted from penalties a member of the armed forces who refused to carry out the act because of its wrongful nature. Nevertheless, if he did carry out the order, he would not be considered to have committed an offence - except if, in obeying the order, he deliberately committed another offence. That being so, the conclusions the Committee had reached upon considering the second periodic report were still valid: there could be no excuse for an act of torture.

11. Turning to article 3 of the Convention, he noted that the risk of being subjected to torture did not feature among the grounds for refusal of extradition listed in paragraph 41 of the report. It was admittedly stated in paragraph 42 that the list was not exhaustive and that it was for the court to decide the matter in the light of the provisions in force, including those of the Convention against Torture. Paragraph 46 of the report cited as an example a request for extradition submitted by China and rejected on the grounds that extradition would violate article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, while paragraph 47 referred to a Supreme Court ruling that, in regard to extradition, account must be taken of the norms of international law, which prohibited, among other things, resort to torture. As it was indicated in paragraph 49 of the report that Poland had extradited 58 persons between 1994 and 1997, it would be useful to know which States had been granted extradition; and where the request had been rejected, it would be interesting to know whether there had been other cases, apart from that of China, in which the grounds for refusal had been that extradition would violate a binding international instrument. He noted that article 53 of the Aliens Act prohibited expulsion of an alien to a country where he would be at risk of torture.

12. Paragraph 51 of the report stated, with regard to the application of article 4 of the Convention, that Polish criminal legislation did not specify a separate offence which would cover the use of torture. But the new Penal Code of 1997 established penalties for acts of violence or threats and for physical or mental ill-treatment. Paragraphs 51 and 52 referred to the 1969 Penal Code as if it were still in force, but it was indicated elsewhere that the new Penal Code made mention of specific cases where it was a public official who resorted to violence or threats in order to obtain a deposition or other statement, as also of cases where violence was used against a person lawfully deprived of liberty. It had been announced in paragraph 26 of the previous periodic report (CAT/C/25/Add.9) that the new Penal Code would contain specific provisions penalizing anyone who used violence or threats to influence a witness, translator or defendant. Could the Polish delegation provide some clarification as to precisely where the provisions of the Penal Code stood in regard to the application of article 4 of the Convention?

13. The tragic events referred to in paragraph 61 of the report seemed to have ended with adequate punishment of the guilty parties, but in view of the heinousness of the acts concerned he would like more information about, firstly, the homicide committed at the Lomazy police station and, secondly, the death caused by the "improper" use of a truncheon at Sl.psk. Had the investigations to which those incidents had given rise shown certain deficiencies in the functioning of the services and what lessons had been learnt from them? Had the authorities installed any safeguards and had reparation and indemnification proceedings been instituted?

14. Poland had set about reforming its judicial system in depth, but one of the most difficult problems to solve was still that of the behaviour of the police force and other law enforcement agencies. Some incidents that had been reported were reminiscent of what had happened under the communist regime. Citing three recent incidents that had ended with the deaths of the victims, he asked, while recognizing that the perpetrators of those acts had been charged and sentenced, what was being done about prevention. The Human Rights Committee, too, had expressed concern at the lack of an independent system of supervision in respect of human rights abuses committed by police officers, the conditions prevailing in penal establishments and particularly in detention centres for minors, and complaints of acts of violence and other offences committed by members of the prison staff. The Human Rights Committee had also expressed concern at the persistence of the practice of ritual bullying ("fala") to which army recruits were subjected. Though paragraph 62 of the report indicated that between 60 and 70 per cent of offences under articles 319 to 321 of the Penal Code committed by conscripted soldiers were connected with "fala", there was no indication in the report that any measures had been taken to combat patterns of behaviour that violated human dignity.

15. With regard to article 10 of the Convention, it was stated in paragraph 102 of the report that training programmes focused on protection of individual rights and freedoms and aimed at developing proper professional habits among police officers. For whom were those training programmes designed? For new recruits to the police or for the force as a whole? It would be interesting to know the respective percentages of newcomers to the law enforcement services and of officers who had already been serving under the communist regime, having in mind the extrajudicial executions and other cases of inhuman and degrading treatment that had been reported during the period under review. In that connection, the Human Rights Committee had recommended that an independent review system should be instituted to see to it that State officials acted within the law. Meanwhile, the European Court of Human Rights had begun considering the case of a person who, having failed to appear when summoned as a witness, had allegedly been apprehended by the police when leaving her place of work, forcibly taken away, beaten and insulted by the police officers, and then placed under arrest without being informed of the reasons or being allowed to contact a lawyer.

16. Mr. YAKOVLEV (Alternate Country Rapporteur) paid tribute to the high quality of the report submitted by the Polish Government, as also to the democratic measures and far-reaching legal changes put into effect during the period covered by it. It was nonetheless regrettable that a definition of torture reflecting that contained in article 1 of the Convention had not been incorporated into the penal legislation. He recalled that, in the conclusions and recommendations it had issued after considering the second periodic report of Poland, the Committee had expressed its concern at certain deficiencies in the anti-torture provisions in force and its regret that the domestic legislation did not include a definition of torture as required by articles 1 and 4 of the Convention. The Polish Government considered that a broad definition of torture in the Penal Code was sufficient. In its third periodic report it argued (para. 51) that the Penal Code of 1969 penalized any act resulting in grave detriment to health, including mental health, or other impairment of any bodily function, or any other ill-treatment, etc. It added (para. 54) that the broad coverage by Polish law of persons subject to penalty for causing severe pain or physical or mental suffering to the injured person marked the main difference between the Polish legislation and the provisions of the Convention, since the latter considered torture to be only actions of public officials. The Government's view was altogether debatable. The

problem faced was to determine which was the more effective for combating torture: a broad definition or a precise definition. Since the definition of torture given in article 1 of the Convention had the greater potential to prevent and combat that crime, it was essential to introduce it into the domestic legislation. It did not apply to any and every act of violence or exercise of improper influence on any person anywhere, but an act committed by a public official in the context of a procedure constituting an integral part of the judicial system. Everyone knew that production of evidence was a key element in judicial procedure. If it was tainted by recourse to torture, the entire judicial system was thereby undermined. That was why article 1 of the Convention expressly spoke of the commission of acts of torture for purposes of obtaining from a person information or a confession. Further, torture within the meaning of article 1 of the Convention also included an act committed for a reason based on any kind of discrimination. To make that point was important, for racial prejudices were often the motive for acts of torture, and no State was immune from ethnic conflicts. Not all the characterizing features of an act of torture enumerated in article 1 of the Convention were also to be found in the general provisions of the Polish Penal Code.

17. That said, he noted with pleasure the frankness of the Polish Government, which had not jibbed at reporting cases of ill-treatment. It was imperative to acknowledge harmful practices in order to be able to eradicate them. However, the identification, in particular with a view to compiling statistics, of the offences committed was made difficult by the broad nature of the provisions of the Penal Code. A Government needed clear and reliable statistics if it was to take appropriate measures for dealing with problems.

18. The Polish legislation on the treatment of detainees was in general satisfactory. It would nevertheless be interesting to know whether a person under arrest who had been subjected to ill-treatment by a public official could appeal against a decision by the judge or prosecutor not to proceed against the perpetrator of the ill-treatment. He wondered, too, whether a person under arrest could talk with a lawyer and ask to be examined by a doctor of his own choosing.

19. Mr. MAVROMMATIS thanked the Polish Government for its introductory statement and stressed the excellence of the report, as also of the core document (HRI/CORE/1/Add.25/Rev.1). However, there were still some questions to be asked. Firstly, what was the precise composition of the National Council of the Judiciary and how was its independence ensured? Secondly, the exact position of the Convention in the Polish legal system was unclear: in particular, did it have the same status as the European Convention for the Prevention of Torture? Another important question, in view of the President's power to ratify and denounce treaties, was whether those two Conventions could be denounced.

20. Like the Rapporteurs, he emphasized the need to include in the legislation a definition of torture. The case cited in paragraph 61 (c) showed how urgent that was. It might be that, as claimed in paragraph 60 of the report, the Polish legal system guaranteed prosecution and punishment of criminal acts covered by the Convention, but that was not enough when one considered the gravity of the crime of torture.

21. With regard to extradition it was disappointing that, in the case cited in paragraph 46 of the report, the provincial court had invoked only the European Convention for the Prevention of

Torture, whereas only the Convention which had established the Committee against Torture contained provisions prohibiting the extradition, refoulement or return of a person to a country where he would be at risk of torture.

22. With regard to the inadmissibility of confessions obtained by force, he associated himself with the objection already expressed to the granting of exoneration to a subordinate who had obeyed the orders of a higher-ranking officer, if the former knew that what he was doing was illegal. Ignorance of the law was no excuse, so why should such a stipulation be made where the perpetrator of an act of torture was concerned? Evidence obtained by duress and indirect evidence should have no place in any penal proceedings.

23. Finally, it was surprising that no complaints of torture had been recorded to date. There was no country where cases of torture or ill-treatment never occurred and he wondered whether the absence of complaints in Poland should be set down to ignorance, lack of a definition of torture, or a cumbersome and complicated procedure. It was in the Government's interest to determine the reasons why no complaints had been lodged to date, so as to be able to take the indispensable measures.

24. Ms. GAER also congratulated the Polish Government on the remarkable progress achieved in the legal system and the reforms undertaken during the period covered by the report. She joined other members of the Committee in stressing the need for a definition of the crime of torture in the domestic legislation. Noting that, as stated in paragraph 47 of the report, the Supreme Court had determined that in giving an opinion on the question of legal admissibility of extradition international law must be taken into account, she asked whether other similar decisions had been handed down subsequently. She expressed concern at the practice of "fala" and asked what measures had been taken to put an end to such practices and grant compensation to the victims.

25. Paragraph 64 of the report contained very interesting information about the criminal proceedings instituted against former officials of the defunct Ministry of Public Security and paragraph 66 stated that 19 former officers had been sentenced in the period 1994-1998 for torturing prisoners. Were violations committed before the coming into effect of the Convention against Torture or before the creation of the People's Republic of Poland also taken into account?

26. In another connection, she had been struck by the information in the 1996 report of the European Committee for the Prevention of Torture that electric wires, metal bars, baseball bats, etc. had been discovered at police stations and that the reasons given to explain their presence had been unconvincing. Such objects had subsequently been banned at police stations and she wondered whether that ban had been extended to other places.

27. Finally, she requested information on the conditions in which women were detained: whether surveillance was exercised in prisons with regard to sexual violence, how complaints on that subject were dealt with, whether women were supervised solely by female guards, what steps had been taken to prevent sexual violence, whether anyone had yet been punished for sexual violence and, lastly, whether any action to sensitize and train prison staff had been envisaged.

28. Mr. SILVA HENRIQUES GASPAR requested clarification concerning paragraphs 16 and 18 of the report, with particular reference to the position of the department of public prosecution and the degree of autonomy or independence it enjoyed. Was there also a hierarchical relationship operating outside the institution, for example through the Ministry of Justice? Particulars regarding guarantees of independence and autonomy in the exercise of the functions of the department of public prosecution, i.e. the conditions for appointment, dismissal and exercise of disciplinary authority were also needed. Finally, he requested explanations regarding the possibility of "conviction without trial" mentioned in paragraph 138 (c).

29. Mr. RASMUSSEN said he was impressed by the various programmes for police training in the area of protection of the rights and freedoms of the individual and by the commitment to use force only in case of absolute need. He would nonetheless like to be assured that the prohibition of torture was effectively included in "human rights protection", for that was a very general term.

30. The CHAIRMAN, speaking as a member of the Committee, noted with gratification, firstly, that Poland did not feature in the report of the Special Rapporteur on torture (E/CN.4/2000/9) and, secondly, that the State party had recognized the competence of the Committee under article 22 of the Convention. He associated himself with the general view concerning article 1 of the Convention and the need to incorporate into Polish legislation a definition of torture using the same terms as the definition in the Convention. It was noteworthy that the new Polish legislation excluded prescription for certain crimes and wondered whether torture practised in a way that was not systematic and generalized - and therefore not amounting to a crime against humanity - was subject to prescription and, if so, after how long.

31. With regard to article 5 of the Convention, paragraph 71 of the report did not make it clear whether the State party considered that it possessed universal penal competence in regard to torture. The view taken by the Committee against Torture had always been that States had not only the power but also the duty to exercise their competence to deal with the crime of torture wherever it had been committed. It would be useful to know the precise position of the Polish State on that subject. Finally, he noted with great pleasure that Poland had contributed to the Voluntary Fund for Victims of Torture in 1999 and warmly encouraged it to go on doing so.

32. The delegation of Poland withdrew.

The first part (public) of the meeting rose at 11.15 a.m.